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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Richard Johnson,

10 Plaintiff,

11 v.

12 Tara Diaz, et al.,

13 Defendants.
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No. CV-15-00670-PHX-MTL

ORDER

15 Pending before the Court are Plaintiff's Motions in Limine No. 1 (Doc. 183) and
16 No. 2 (Doc. 184). The Court heard oral argument on October 25, 2019, and took the
17 matters under advisement. (Doc. 196.) The Court now issues its rulings.

18 Plaintiff Richard Johnson is an Arizona state prisoner. Defendants Tara Diaz,
19 Heather Pruet, and Jeff Rode are Arizona Department of Corrections ("ADOC")
20 officials. On October 22, 2014, Defendants conducted a hearing and validated Plaintiff
21 as a member of the Warrior Society Security Threat Group ("STG"). Plaintiff alleges
22 that Defendants violated his First Amendment Rights under the United States
23 Constitution because they validated him as a member of the Warrior Society STG in
24 Retaliation for him having previously submitted grievances concerning his cell conditions
25 and other related matters. It is undisputed that Defendants' decision to validate Plaintiff
26 as a member of the Warrior Society STG was based *solely* on information contained in
27 the "Validation Packet," which detailed evidence that was collected between June 9, 2014
28 and August 1, 2014.

1 In Plaintiff's Motion in Limine No. 1: Regarding Prior or Subsequent STG
2 Validation Information, Plaintiff moves the Court (Doc. 183, at 1) to preclude Defendants
3 "from introducing at trial evidence relating to Johnson's status as a Security Threat
4 Group ("STG") member that was not contained in Johnson's Validation Packet..."
5 Plaintiff argues that any gang-related or disciplinary infraction evidence that was not
6 contained in the Validation Packet is irrelevant to whether Defendants had a retaliatory
7 motive during the October 22, 2014 hearing. (Doc. 183, at 2.) Defendants respond that
8 any gang-related or disciplinary infraction evidence that was not contained in the
9 Validation Packet should be admissible to rebut the allegation by Plaintiff that
10 Defendants were part of a larger conspiracy to retaliate against him for filing grievances.
11 (Doc. 186, at 2.) More specifically, Defendants contend that evidence outside of what
12 was contained in the Validation Packet will "refute any attempt to have the jury infer that
13 [Plaintiff's] conspiracy theory is evidenced by his never having been involved in any
14 prison gang activity." (*Id.*) At oral argument Defendants conceded, however, that any
15 gang-related or disciplinary infraction evidence that was not contained in the Validation
16 Packet should only be admissible as rebuttal evidence if appropriate, not in their cases in
17 chief.

18 At this juncture, without having heard Plaintiff's case in chief, the Court agrees
19 that evidence of Plaintiff's gang-related activity or disciplinary infractions that was not
20 contained in the Validation Packet is irrelevant to the question of whether Defendants
21 validated Plaintiff in retaliation for filing grievances. As set forth below, it is ordered
22 **granting** Plaintiff's Motion in Limine No. 1.

23 In Plaintiff's Motion in Limine No. 2: Regarding June 6, 2010 Incident, Plaintiff
24 seeks (Doc. 184, at 1) to preclude Defendants from introducing evidence about his role in
25 the June 6, 2010 murder of another inmate. Information about Plaintiff's role in the June
26 6, 2010 murder was not contained in the Validation Packet and Defendants did not
27 consider it when validating Plaintiff as an STG member. Defendants agreed at oral
28 argument that they would not introduce evidence about the homicide in their cases in

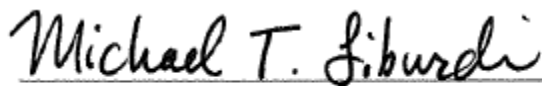
1 chief, and that any such evidence would only potentially be relevant as rebuttal evidence.
2 As set forth below, it is therefore ordered **granting** Plaintiff's Motion in Limine No. 2.

3 For the foregoing reasons,

4 **IT IS ORDERED** granting Plaintiff's Motion in Limine No. 1 (Doc. 183).
5 Defendants are precluded from mentioning in opening statements and from asking
6 questions during Plaintiff's case in chief about Plaintiff's gang-related activity or
7 disciplinary infractions that was not contained in the Validation Packet. Defendants are
8 also precluded from presenting such evidence in their own cases in chief (and in
9 Plaintiff's rebuttal case, if any) without moving the Court for reconsideration of this
10 order. Defendants are not foreclosed from moving for reconsideration of this Order if
11 warranted to rebut evidence presented by Plaintiff in his case in chief.

12 **IT IS FURTHER ORDERED** granting Plaintiff's Motion in Limine No. 2, (Doc.
13 184). Defendants are precluded from mentioning in opening statements and from asking
14 questions during Plaintiff's case in chief about Plaintiff's role in the June 6, 2010 murder.
15 Defendants are also precluded from presenting such evidence in their own cases in chief
16 (and in Plaintiff's rebuttal case, if any) without moving the Court for reconsideration of
17 this order. Defendants are not foreclosed from moving for reconsideration of this Order
18 if warranted to rebut evidence presented by Plaintiff in his case in chief.

19 Dated this October 28, 2019.

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21 Michael T. Liburdi
22 United States District Judge
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